APPENDIX A

Findings of Fact, Conclusions of Law and Judgment of the United States District Court for the Western District of Oklahoma

FINDINGS OF FACT

The Court, as trier of the facts, finds all facts and all issues generally in favor of cross-complainant under his amended first counterclaim, and finds all issues thereunder express or implied, in favor of defendant cross-complainant. In addition thereto, and in addition to the findings previously made by the Court from the bench, the Court further specifically finds:

1. The note sued upon was at all times held without the State of Oklahoma and the amount owed plaintiff thereon is $8,133.28.

2. There is diversity of citizenship between the parties and the amount in controversy exceeds the amount required for jurisdiction in this Court.

3. At all times, the Bronfman family, acting through its authorized agent and representative, Edgar Bronfman, so fully dominated and controlled the Riceland Corporation, plaintiff's predecessor, that it did not exist or operate as a separate corporate entity, and the Bronfmans exercised complete management and control over plaintiff and its wholly-owned subsidiary, Huntington Creek Corporation. The oral agreement which the Court finds existed was made between Edgar Bronfman and defendant, through M. R. Shaffer, an authorized representative and agent and officer of the Riceland Corporation, and was binding upon the Bronfman family, the Riceland Corporation and the two corporations succeeding in ownership to the corporate stock of the Riceland Corporation. The parties understood and agreed that such oral agreement would be and was binding on the Riceland Corporation.

4. The verbal agreement with defendant, vesting an option in him to purchase a total of thirty per cent of the outstanding common stock of the Riceland Corporation, and to give him a valid, written, enforceable option to that extent, was not a part of defendant's employment agreement, but was made in 1954 after defendant had accepted and commenced employment with said corporation; it was a separate and divisable oral contract and was supported by the executed consideration of services previously rendered and then being rendered by defendant to the Bronfman family and the Riceland Corporation, both being one and the same.

5. Under the verbal option agreement, defendant had a vested option to buy thirty per cent of the issued and outstanding common stock of the Riceland Corporation, exercisable at any time and as to all or any part of said thirty per cent, at a price of one dollar per share, and defendant was to receive a valid written and enforceable option to said extent.

6. On June 2nd and 6th, 1955, the Bronfmans and Riceland Corporation partially performed said previous oral agreement by delivering three letters, signed by an officer of the Riceland Corporation and an employee of the Bronfmans, duly authorized to so execute and deliver said letters, which constituted a valid and enforceable written option in defendant to purchase eight per cent of the total common corporate stock of the Riceland Corporation then issued and outstanding. Said instrument was accepted by defendant, who was then prepared, able and willing to execute said option, furnished in partial performance of the prior agreement, but exercise thereof was deferred at the request of the Bronfmans and the Riceland Corporation.

7. Defendant had a reasonable time within which to exercise his option, under all of the circumstances, and did exercise said option within a reasonable time, orally, on the

morning of January 22, 1957, and thereafter in writing, tendering the purchase price of one dollar per share by application on the amount then due him, by letters dated February 13, 1957, and June 14, 1957. The stock option agreement was breached by refusal to recognize his rights, and he had no obligation to make cash tender at the time of his discharge or any subsequent time, since such a tender would have been vain and useless, but he nevertheless did make such a tender by his letters aforesaid and in his amended counterclaim herein.

8. Defendant agreed to assign one-third of his stock, when obtained, to Mr. Hicks, but there was no [illegible]ion agreement or other agreement relative to the [illegible]ck between Hicks and the Bronfmans or their corporat[illegible]s.

9. Defendant fully performed his part of the option agre[illegible]nent to the date of his discharge, and was willing to cont[illegible]ue such performance, and the services so rendered were unique and highly successful, and constituted the basic and primary consideration for the stock option and for exercise thereof, the one dollar per share payable upon exercise thereof being a subordinate consideration which the Bronfmans and the Riceland Corporation declined to accept, although offered.

10. As of January 22, 1957, and thereafter, the Bronfmans and the Riceland Corporation breached a valid and binding stock option agreement with defendant and as of such time the value of said common stock was $3.27 per share. Exercise of said option by defendant bound the Bronfmans and the Riceland Corporation to transfer 25,450 shares of the then issued and outstanding aggregate of 84,834 shares, and after crediting one dollar per share thereon, defendant was entitled to common stock of an aggregate value of $57,771.50. Partial performance by the Riceland Corporation of said oral agreement occurred before plaintiff's subsidiary acquired the Bronfmans' stock

as of June 30, 1955, and it and plaintiff was aware of and were bound by the obligation of the Riceland Corporation and the Bronfman family to defendant. Plaintiff made performance of such contract impossible by it by dissolving the Riceland Corporation and defendant was entitled to counterclaim herein for the obligation so assumed by plaintiff in dissolution of the Riceland Corporation, and is entitled to judgment in the principal amount of $57,771.50 with interest thereon from January 22, 1957, at six per cent per annum until paid, such interest totalling $16,331.64 from said date to October 9, 1961. Applying the amount due plaintiff under defendant's promissory note to the interest payable to the defendant, leaves a balance of interest now payable to defendant of $8,198.36.

11. Although defendant's option rights were unconditional, at all times the wells drilled by the Riceland Corporation for the Frankfort Corporation were upon contracts awarded after competitive bids, and from 1956 onward, the Riceland Corporation drilled more wells for others than it drilled for the Frankfort Corporation.

12. The agreement with defendant for a stock option was not an agreement for the sale of stock but conferred rights upon him either to exercise said option or not, as he chose, and was a right evidenced, in part, by the letters of the Riceland Corporation delivered and accepted in June of 1955. Defendant received and accepted this evidence of his right, and had theretofore paid the purchase price for such right through his exceptional services.

13. The letter of June 6, 1955, from the Riceland Corporation to M. R. Shaffer constituted an attempted transfer of title to a corporate stock certificate recognized as owned by him, unaccompanied by delivery of the certificate, and was a written promise to transfer one per cent of the total issued stock then outstanding.

14. The verbal agreement for a stock option could have been exercised by defendant within, and was performable

by the Riceland Corporation within a year from the time it was made. Defendant became President of Riceland Corporation in July of 1954 and thereafter was employed and re-elected as President of said corporation from year to year.

15. The Bronfman family, acting through Edgar Bronfman, and Edgar Bronfman himself, never intended to perform or to fully perform the oral agreement or written option with defendant. The stock option transaction was tainted with fraud of Edgar Bronfman and he was guilty of fraud from the inception of the agreement which he made and was authorized to make. He intended to use the Oklahoma Statute of Frauds and the corporations involved to perpetrate fraud.

16. The actual value of the stock to which defendant was entitled was ascertainable as of January 22, 1957, and thereafter, and stipulated book value thereof did not completely reflect said actual value. The Court has twice requested the financial statements of the Riceland Corporation from plaintiff and has not been furnished with the same.

17. During 1955, M. R. Shaffer, as duly authorized agent and representative of the Bronfmans and the Riceland Corporation, prepared, signed and submitted a notegram or memorandum specifying a total common stock participation by defendant of thirty per cent of the issued and outstanding common stock of the Riceland Corporation, which, considered with the letters of June 1955 previously mentioned, constituted definite, complete, connected memoranda constituting an enforceable written stock option to the extent of thirty per cent of the issued and outstanding shares of common stock of the Riceland Corporation, the three letters of June, 1955, recognizing that defendant's "full" or "total" participation was greater than the eight per cent thereby extended to him.

18. It was immaterial to defendant ~~or to the parties~~ involved whether his stock option bound stock issued and outstanding at any one time, wholly or partly, or partly from authorized but unissued common stock of the Riceland Corporation, since if exercised and satisfied in whole or in part from unissued stock of said corporation, defendant would have been entitled to a larger number of shares of said stock, with a proportionately lower value per share, but with the same aggregate value as if transferred only from stock then issued and outstanding.

Conclusions of Law

1. Plaintiff is entitled to judgment for the balance due under defendant's promissory note in the amount of $8,133.28, to be applied as an offset against the interest due defendant on the principal amount of his judgment under his amended first counterclaim. No taxes are due the State of Oklahoma under the Intangible Tax Laws by reason of said promissory note.

2. Defendant is entitled to withdraw his amended second counterclaim and to have it dismissed without prejudice.

3. The stock option agreement with defendant was [illegible] is valid, binding and complete, exercisable in whole or in part at any time or within a year from the initial making thereof, constituted a valid and binding obligation of the Riceland Corporation, assumed by and known to plaintiff, and binding upon it, and the enforceability thereof is not barred by the Oklahoma Statute of Frauds, or any portion thereof, because of partial performance thereof by the Riceland Corporation, performance thereof by defendant, and sufficient written memoranda thereof.

4. Defendant is entitled to judgment against plaintiff under his amended first counterclaim for breach of contract to his monetary damage in the principal amount of $57,771.50, ascertainable as of January 22, 1957, with in-

terest thereon from said date at the rate of six per cent per annum, totalling $16,331.64 as of October 9, 1961, and thereafter until paid.

5. Costs herein are taxable against plaintiff.

STEPHEN S. CHANDLER,
Judge

Filed Nov. 21, 1961.

JUDGMENT

This action was tried by the Court without a jury on December 13, 1960, when plaintiff appeared by its attorneys, William A. Jansen of New York City, New York, T. Murray Robinson and Leon Shipp, of Oklahoma City, Oklahoma, and defendant appeared in person and by his attorneys, Houston Bus Hill and Loyd Benefield. The Court's findings are filed herewith, and the Clerk is directed to enter this Judgment. The Court finds generally all issues, express or implied, in favor of defendant under his amended first counterclaim and against plaintiff, and finds that defendant is entitled to withdraw his amended second counterclaim, which should be dismissed without prejudice.

It Is Hereby Ordered And Adjudged as follows:

1. Defendant has judgment against plaintiff under his amended first counterclaim in the amount of $57,771.50, principal, with interest thereon at the rate of six per cent per annum from January 22, 1957, until paid, which interest aggregates $16,331.64 as of October 9, 1961, against which total interest, as an offset reducing the same to a total of $8,198.36 as of October 9, 1961, plaintiff is entitled to the amount of its judgment under its complaint, herein rendered.

2. Plaintiff has judgment as an offset against the total interest due and payable to defendant upon his judgment,

in the sum of $8,133.28, which amount is fully paid as an offset against said interest on defendant's judgment.

3. Defendant's amended second counterclaim is dismissed without prejudice.

4. Costs herein are taxed against plaintiff, the taxable amount thereof to be hereafter inserted by the Clerk of this Court, being in the sum of $.....

Dated and directed to be entered this 21st day of November, 1961.

STEPHEN S. CHANDLER
Chief Judge of the United States District Court

Entered Nov. 21, 1961.

APPENDIX B

Opinion of the Court of Appeals, United States Court of Appeals for the Tenth Circuit

OPINION

(October 25, 1962)

T. Murray Robinson and William A. Jansen (Mathias F. Correa, Robinson, Robertson & Barnes, John W. Nields, and Cahill, Gordon, Reindel & Ohl were with them on the brief) for Appellant.

John A. Johnson (Houston Bus Hill and Savage, Gibson, Benefield & Shelton were with him on the brief) for Appellee.

Before MURRAH, Chief Judge, and PICKETT and HILL, Circuit Judges.

HILL, Circuit Judge.

This diversity action is here on appeal from a judgment rendered by the court below, sitting without a jury, in

favor of appellee, Dan W. Shaffer, on his counterclaim against appellant, Joseph E. Seagram & Sons, Inc., for breach of an alleged oral contract entitling him to purchase a certain amount of corporate stock.

Joseph E. Seagram & Sons, Inc., is the successor corporation to Riceland Corporation (hereafter referred to as Riceland). In 1954 the Bronfman family[1] of Montreal, Canada, owned 99% of the outstanding shares of common stock in Riceland.[2] The remaining 1% of issued stock was owned by M. R. Shaffer, a cousin of appellee, who was employed by the Bronfmans as a consultant on their investments in the oil and gas industry, and who was vice president of the Frankfort Oil Company (hereafter referred to as Frankfort), one of the many Bronfman family owned corporations.

At the beginning of 1954, Riceland was inactive, had practically no assets and had a large deficit on its books. At this time M. R. Shaffer was directed by the Bronfmans to determine the feasibility of reviving Riceland for the purpose of engaging in the business of drilling oil and gas wells. As a result, the Bronfmans decided to reactivate Riceland and asked M. R. Shaffer to find a suitable person to manage the revived corporation. To that end M. R. Shaffer contacted appellee early in 1954 and inquired if appellee was interested in the position with Riceland. Appellee was then employed as assistant drilling superintendent by a drilling company located in Tulsa, Oklahoma, but nevertheless indicated that he was interested in the job. His name was eltimately submitted to the Bronfmans with

[1] The Bronfman family was represented, in matters relevant to this case, by Edgar Bronfman, then a resident of Canada but now a resident of New York and the President of appellant corporation.

[2] Riceland was authorized by its charter to issue 150,000 shares of common stock but in 1954 only 79,699 shares had been issued. It also had issued some shares of preferred stock but these are not material to this case.

M. R. Shaffer's recommendation, in the form of a written memorandum dated February 22, 1954, that he be employed to take charge of Riceland's day to day drilling operations at a salary of $12,000 per year plus an expense account and automobile. M. R. Shaffer also stated in the memorandum:

> "Dan Shaffer [appellant] should acquire, and I would like to approve common stock holdings in Riceland."

Riceland was revived, appellee's employment was approved by the Bronfmans as recommended by M. R. Shaffer and he commenced work on April 16, 1954, taking charge of the drilling operations.

It is undisputed that some seven months after appellee's employment commenced, Riceland loaned him $10,000 to purchase a home.[3] It is also undisputed that the subject of allowing appellee to acquire common stock holdings in Riceland was discussed at the time he accepted the position with Riceland, but no agreement was reached at that time concerning the stock purchase.

M. R. Shaffer testified that in May, 1954, he informed appellee that a 30% stock option for him had been accepted and approved or agreed to by the Bronfmans. Appellee then replied that this was acceptable to him. In this respect, M. R. Shaffer further testified at the trial, that as a result of the reviving of Riceland he made a survey to determine an equitable participation in corporation stock between the financiers and operators of it; that he prepared and submitted a written memorandum or "notegram" to the Bronfmans wherein he recommended a 60-40

[3] Appellee's refusal to repay the balance due on loan was the basis of this action as originally instituted by appellant, and it recovered judgment in the sum of $8,133.28 plus interest against appellee on its complaint. This portion of the judgment below is not questioned here.

participation with the Bronfmans retaining 60% of the common stock, he, M. R. Shaffer, would increase his holdings from 1% to 10%, and appellee would have 30%; that prior to the time he advised appellee of the 30% stock purchase contract this memorandum was discussed with the Bronfmans, who acted favorably upon and agreed to his recommendations; and that he was authorized by them to contact appellee and see if the 30% was agreeable, which he did, and reported back to Edgar Bronfman that the deal was made with appellee on that basis. This memorandum was not produced at the trial, but, M. R. Shaffer was permitted, over objection, to testify about it. He also testified that there was no discussion about when the "option" was exercised and there was no discussion or agreement where the stock was going to come from, i.e., whether from outstanding stock or unissued stock. Nor was there anything in writing from either the Bronfmans or Riceland to appellee defining the terms of such alleged agreement. In this connection Edgar Bronfman testified he had never discussed a 30% stock participation plan for appellee with M. R. Shaffer, appellee, or anyone else and the figure of 30% was never mentioned until appellee asserted his claim for that amount in 1957.

On July 8, 1954, appellee officially became President and a director of Riceland. Almost a year later on April 6, 1955, and without any further action having been taken with regard to the alleged oral contract in question, Edgar Bronfman wrote to appellee advising him that his salary had been raised to $17,000 per year, retroactive to January 1, 1955, and stating:

> "Common stock participations by yourself and Mr. Hicks are under advisement and, when the details have been examined, I should like to discuss this with you."[4]

[4] It appears from the record that appellee had made a separate agreement with Hicks whereby he would relinquish 10% of his alleged 30% to Hicks as an inducement for Hick's employment.

On June 2, 1955, E. A. Bratton, an accountant for the Bronfmans and Vice President and Treasurer of Riceland wrote to appellee as follows:

"Dear Dan:

Re: Shareholding Interests.

"This will confirm the shareholding participations in the outstanding common stock of Riceland Corporation for yourself and Orville W. Hicks as follows:

Dan W. Shaffer	5%	4,242 shares
Orville W. Hicks	2%	1,696 "
Other Shareholders	93%	78,900 "
	100%	84,838 "

"The cost of the shares will be $1.00 a share, with terms of payment to be arranged.

"It is also understood that the 799 shares owned by Mr. M. R. Shaffer will form part of your common stock participation and that Mr. M. R. Shaffer will be reimbursed $799.00 representing his cost.

"A directors' meeting will be required to formally confirm your stock participation. I suggest, however, that this meeting be deferred for the time being."[5]

Appellee testified that he interpreted this letter as meaning the 5% to him and the 2% to Hicks represented a partial draw down against his 30% participation and that, upon receiving it, he immediately called M. R. Shaffer who suggested he telephone Bratton, which he did, informing Bratton of his interpretation and was advised by Bratton

[5] It is conceded in the record that no action was ever taken by Riceland's directors with respect to any stock option in favor of appellee, despite the existence of this and other correspondence hereafter discussed.

"to hold off on doing anything and he would be told later how the whole matter would be handled."[6]

Four days later and on June 6, 1955, Bratton wrote to M. R. Shaffer, as follows:

> "Dear Ray: With further reference to the shares of Riceland owned by you, it has been the understanding that they will be purchased by Dan Shaffer. I am told that this should be done immediately, even before Dan takes down the balance of his share option. The cost for your shares is $1.00 a share of $799.00 total.
>
> "Will you please undertake with Dan to transfer the shares as soon as you can?"[7]

On the same day, Bratton wrote to appellee, enclosing a copy of the letter to M. R. Shaffer, and stating:

> "Dear Dan: Attached is copy of letter to Ray in connection with the purchase by you of his 799 shares of Riceland.
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> "There is one point, Dan -- if you wish to defer purchase until you get your full participation or for personal reasons you do not wish to take down the shares now, an alternative method would be for Riceland to redeem the shares; they would then be included in your total participation when issued later.
>
> "Whichever way you decide is satisfactory to the other directors, Dan, but you might let me know what you decide."[8]

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[6] In this connection M. R. Shaffer testified about the letter as follows:

> "This would be a draw down of stock totaling 7 per cent, and would have to have been -- for authorized by the stockholders of Riceland."

[7] This transaction concededly never occurred.

[8] Edgar Bronfman testified that he "assumed" the three letters were discussed with him before they were written and did not deny he authorized Bratton to write them.

In late 1955, all of the outstanding stock of Riceland was sold to The Huntington Creek Corporation, one of appellant's wholly owned subsidiaries. This transfer was effective as of June 30, 1955, and the Huntington Creek corporate minutes reflect that 79,699 shares of Riceland's common stock, having a par value of $1.00 per share, were purchased by it for $.79 per share. Appellee testified M. R. Shaffer informed him that a decision had been made to satisfy his stock participation by some other means, namely, an option on appellant's stock for equal value since Riceland's stock had been sold to Huntington Creek but that this would be worked out with him.

Appellee further testified that in December, 1955, he was in New York City on Business for the company; that the subject of his stock participation was to be discussed but Edgar Bronfman was unable to attend this meeting so no such discussion was had; that he called Bronfman in Montreal from New York City and Bronfman requested the stock purchase discussion be deferred, but assured him the matter would be worked out later.

The record shows nothing further was done about the "option" for over a year until shortly before appellee was removed from his position as President and Director of Riceland on January 22, 1957. It is not disputed that on January 2, 1957, and, after appellee had learned of the probable termination of his employment, he submitted a written offer to purchase Riceland based upon an actual valuation of $3.27 a share for the stock and that his offer included the relinquishment of any consideration due on his stock participation plan. Appellee's offer was rejected and he then orally attempted to exercise his alleged 30% stock option at the time he was removed from office.

On February 13, 1957,[9] appellee wrote to Edgar Bronf-

[9] He apparently wrote an earlier letter on February 6, 1957, which was unintentionally unsigned and in which he stated that the "option" was a "substantial part of the inducement to me to assume the presidency of Riceland."

man asserting his alleged 30% stock option and requesting that shares of common stock of that amount be delivered to him. On February 15, 1957, Edgar Bronfman wrote to appellee denying that appellee had ever had a "stock option agreement" and stating that when Huntington Creek purchased Riceland's stock "I told you that any discussions we had had about a stock participation were obsolete, as the situation had radically altered." This is apparently a reference to the decline in Riceland's drilling operations in 1956 which ultimately led to appellee's dismissal from Riceland.

About four months later, Riceland demanded payment of the loan it had made to appellee, which was refused. Appellee then asserted that under the terms of his employment he was to have a stock participation of 30% of Riceland's common stock and he was willing to let the unpaid balance of the note apply against the stock settlement.

Thereafter, and as of July 31, 1957, Huntington Creek transferred all of Riceland's outstanding stock to appellant and Riceland was later dissolved. All of its assets were distributed to appellant.

Upon this and other evidence hereafter discussed, the trial court resolved all issues of fact and law in favor of appellee on his counterclaim and specifically found: An oral contract was made between appellee and Edgar Bronfman, through M. R. Shaffer, which was binding upon the Bronfmans, Riceland, Huntington Creek and appellant, under the terms of which an option to purchase 30% of the outstanding common stock of Riceland became vested in appellee and such agreement was made, not as a part of his employment agreement, but in 1954 after he had accepted and commenced such employment; appellee was to receive a valid written and enforceable option to buy 30% of such stock for $1.00 per share, exercisable at any time and as to all or any part of 30% of the stock; the oral contract was supported by executed consideration in the form

of services rendered and then being rendered to the Bronfmans and Riceland;[10] the stock option was evidenced by the unfound memorandum or "notegram" prepared by M. R. Shaffer and the letters signed by Riceland's officer and agent, Bratton, dated June 2 and 6, 1955; the delivery of such letters constituted partial performance by the Bronfman family and Riceland; appellee had a reasonable time within which to exercise such option and he did so within that time; at the time the oral contract was breached the value of the common stock was $3.27 per share; and appellee was entitled to a transfer of 25,450 shares of the then issued and outstanding aggregate of 84,834 shares. The court, after crediting $1.00 per share thereon, rendered judgment for appellee on the basis of common stock of an aggregate value of $57,771.50. Appellant perfected this appeal from that judgment, contending that the claimed oral agreement is invalid and unenforceable under the Oklahoma Statute of Frauds.[11]

The object of the statute of frauds is to prevent fraud and perjury in the enforcement of obligations, depending for their evidencing support on the unassisted memory of witnesses, by requiring certain designated contracts and

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[10] The court found and held that the Bronfmans so dominated and controlled Riceland that it did not exist as a separate corporate entity.

[11] 15 Okl. St. Annot., § 136, provides in pertinent part as follows:

> "The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:
>
> 1. An agreement that, by its terms, is not to be performed within a year from the making thereof.
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> • • • •
>
> 4. An agreement for the sale of goods, chattels, or things in action, at a price not less than fifty dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences or some of them, of such things in action, or pay at the same time some part of the purchase money; • • •."

transactions to be evidenced by a writing signed by the party to be charged and not for the purpose of promoting frauds or aiding an individual in the perpetration of a fraud. Wells v. Shriver, 81 Okl. 108, 197 Pac. 460; 37 C.J.S., Statute of Frauds, § 1, p. 513. It does not prohibit the making of such contracts but only affects and prohibits the enforcement thereof. Bond v. Chalfant, 201 Okl. 600, 208 P. 2d 535; Teel v. Harlan, 199 Okl. 268, 185 P. 2d 695.

In Oklahoma, the statute of frauds clearly applies to a contract for the purchase and sale of corporate stock. Farrell v. Simons, 180 Okl. 600, 71 P. 2d 688; Dennison v. Hildt, 180 Okl. 399, 70 P. 2d 56, 112 A.L.R. 486. Such a contract is, therefore, invalid and unenforceable under subsection 4 of § 136 unless one of the following requirements is met: (1) "the buyer accept or receive part of such goods and chattels, or the evidences or some of them, of such things in action"; or (2) "the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent"; or (3) the buyer "pay at the same time some part of the purchase money."

There is no question presented here with respect to the first requirement since the appellee, as the buyer under the alleged oral agreement or "option" clearly did not receive or accept any part of the corporate stock, or any evidence thereof, alleged to be covered by such agreement. The court below did, however, find that the material terms of the claimed oral agreement were reflected in the written memorandum or "notegram" prepared by M. R. Shaffer and submitted to the Bronfmans and the three letters written by Bratton in June, 1955,[12] and that, in any event, the claimed oral agreement was partly performed by both par-

[12] Finding No. 17 reads as follows:

"During 1955, M. R. Shaffer, as duly authorized agent and representative of the Bronfmans and the Riceland Corporation, prepared, signed and submitted a notegram or memorandum specifying a total common stock participation by

ties.[13] The court then concluded that the enforceability of the claimed oral agreement was not barred by the Oklahoma Statute of Frauds.

"The well-established rule is that a complete contract, whether it relates to a sale of real estate or a sale of goods, which is binding under the statute of frauds may be entered into by one or more letters, telegrams or other writings between the parties relative to the subject matter of the contract if they are so connected with each other that they may be fairly said to constitute one paper relating to

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defendant of thirty per cent of the issued and outstanding common stock of the Riceland Corporation, which, considered with the letters of June 1955 previously mentioned, constituted definite, complete, connected memoranda constituting an enforceable written stock option to the extent of thirty per cent of the issued and outstanding shares of common stock of the Riceland Corporation, the three letters of June, 1955, recognizing that defendant's 'full' or 'total' participation was greater than the eight per cent thereby extended to him."

[13] Findings Nos. 6 and 9 read as follows:

"On June 2nd and 6th, 1955, the Bronfmans and Riceland Corporation partially performed said previous oral agreement by delivering three letters, signed by an officer of the Riceland Corporation and an employee of the Bronfmans, duly authorized to so execute and deliver said letters, which constituted a valid and enforceable written option in defendant to purchase eight per cent of the total common corporate stock of the Riceland Corporation then issued and outstanding. Said instrument was accepted by defendant, who was then prepared, able and willing to execute said option, furnished in partial performance of the prior agreement, but exercise thereof was deferred at the request of the Bronfmans and the Riceland Corporation."

"Defendant fully performed his part of the option agreement to the date of his discharge, and was willing to continue such performance, and the services so rendered were unique and highly successful, and constituted the basic and primary consideration for the stock option and for exercise thereof, the one dollar per share payable upon exercise thereof being a subordinate consideration which the Bronfmans and the Riceland Corporation declined to accept, although offered."

the contract. However, in order to be sufficient the writings relied upon must by reference to each other disclose every material part of a valid contract and must be signed by the party sought to be charged or by his agent. The memoranda or writings must plainly set forth the parties to the contract, the subject matter thereof, the price or consideration, a description of the property, and all of the terms and conditions of the contract, and must leave nothing to rest in parol. Irvine v. Hamotis, 208 Okl. 1, 252 P. 2d 470; Hawkins v. Wright, 204 Okl. 55, 226 P. 2d 957; Jennings v. New York Petroleum Royalty Corp., 169 Okl. 528, 43 P. 2d 762; Mason Motors Spirit Distributing Co. v. Cosden, 105 Okl. 244, 231 Pac. 890; Atwood v. Rose, 32 Okl. 355, 122 Pac. 929; Halsell v. Renfrow, 14 Okl. 674, 78 Pac. 118, aff'd 202 U.S. 287. Parol evidence cannot be permitted to supply an omission of any essential element of the contract. Halsell v. Renfrow, supra. The design of the statute is to have written evidence of the terms thereof and any missing link which requires resort to oral evidence to connect or establish the agreement is fatal. Dennison v. Hildt, supra. And there must be no substantial inconsistency between a signed document and another document incorporated in it by reference or relied upon to establish any of the material terms of the contract. 37 C.J.S. Statute of Frauds, § 178, p. 661.

The memoranda or writings required by the statute must show an existing and binding contract, a concluded agreement, a meeting of the minds of the parties as distinguished from mere negotiations. It is an incomplete contract where the parties have left an essential part of the agreement for future determination. Farrell v. Simons, supra; Griffin Grocery Co. v. Kingfisher Mill & E. Co., 168 Okl. 157, 32 P. 2d 63; American Natl. Bank v. Ardmoreite Pub. Co., 123 Okl. 225, 253 Pac. 81, 37 C.J.S., Statute of Frauds, § 180, p. 663. If the memoranda or writings are afterwards lost or destroyed, the contents thereof may be proved by oral testimony after a proper foundation has been laid. 49 Am.

Jur., Statute of Frauds, § 315, p. 630; 2 Corbin on Contracts, § 529, p. 790.

The question of whether the memoranda, letters or other writings relied upon are sufficient to constitute a contract or agreement which meets the requirements of the statute is one for the court to determine as a matter of law. Atwood v. Rose, supra; American Jobbing Ass'n v. James, 24 Okl. 460, 103 Pac. 670; 49 Am. Jur., Statute of Frauds, § 321, p. 636. Cf. Bell v. Ralston Purina Company, 10 Cir., 257 F. 2d 31. We must, therefore, determine as a matter of law whether the writings relied upon in this case, when measured by the standards of the foregoing rules, are sufficient to constitute a complete and binding agreement such as will satisfy the requirements of the statute of frauds.

It is readily apparent from an examination of the testimony regarding the unfound memorandum and a reading of the three letters that no one of them alone is sufficient to establish a binding contract under the statute. It is equally apparent to us that the unfound memorandum and the three letters when considered together are insufficient to constitute an existing and binding agreement such as will meet the requirements of the statute. Not only do the four documents fail to set forth all of the terms of the alleged agreement, such as the number of shares, whether such shares are to come from outstanding or unissued capital stock and the terms of payment, but they are actually inconsistent with each other. According to the evidence viewed in the light most favorable to appellee, the only thing agreed upon at the time he was employed is that he was to receive a "substantial stock option." It cannot be concluded that this is a completed contract and, indeed, no such contention is made. Appellee does contend as the trial court found that the unfound memorandum prepared by M. R. Shaffer establishes that he was to receive a 30% stock option and that this memorandum together with the three letters is sufficient. We do not agree for at least two reasons. First, the unfound memorandum is nothing more

than the recommendations of an agent to his principal and is not a writing between the parties, that is, it is not a writing between appellee and Riceland or the Bronfmans, and considered together with the three letters fails to show a meeting of the minds or a completed agreement. In order to so find, it is necessary to rely upon the oral testimony of M. R. Shaffer, which is exactly what the statute of frauds seeks to avoid. Second, the unfound memorandum is actually inconsistent with the later letters in that nowhere in the letters is a figure of 30% mentioned, but to the contrary, a figure of 5% plus 2% is mentioned. Moreover, even as late as January 1, 1955, after the preparation of the purported memorandum, there was no agreement between the parties. The most that can be said of these writings is that they tend to show negotiations between the parties were being carried on for appellee to acquire common stock holdings in Riceland if a suitable agreement could be reached.

We conclude that even when considered together the four documents are not sufficient to establish an existing and binding agreement such as is required to satisfy the statute of frauds. To hold otherwise would frustrate the purpose of the statute.

There remains to be considered the question of part performance as found by the trial court. In this connection, appellee contended in the court below and the court found[11]

[11] Finding No. 4 reads as follows:

"The verbal agreement with defendant, vesting an option in him to purchase a total of thirty per cent of the outstanding common stock of the Riceland Corporation, and to give him a valid written, enforceable option to that extent, was not a part of defendant's employment agreement, but was made in 1954 after defendant had accepted and commenced employment with said corporation; it was a separate and divisible oral contract and was supported by the executed consideration of services previously rendered an then being rendered by defendant to the Bronfman family and the Riceland Corporation, both being one and the same."

that the alleged oral agreement vesting a 30% stock option in appellee was not a part of his employment agreement but was made after he had accepted and commenced such employment and that it was a separate and divisible oral contract. In short, appellee's position was and is that there were two separate and distinct agreements between the parties, i.e., the employment agreement and the alleged oral agreement vesting a 30% stock option in him. That being the case, the performance of services under the employment agreement did not constitute a part performance of the alleged "option" agreement. In fact, the record conclusively establishes that the only consideration mentioned as to the alleged stock option was $1.00 per share. No part of such consideration was paid or tendered at any time and, therefore, there has been no part performance of the alleged agreement to take it out of the prohibition of the statute of frauds.

One other error urged by appellant that deserves our consideration is the specific finding of fraud on the part of Edgar Bronfman. Appellee did not plead fraud nor does the record show any mention of it until the trial judge, in his oral findings from the bench at the conclusion of the trial, injected it into the case. The pinning of the badge of fraud upon a person is a matter of serious concern and we fully appreciate appellant's desire to have this stigma removed. There is not a word of evidence in the case to justify such a finding. It was error for the trial judge to make such a finding.[15]

[15] The finding is as follows:

> "The Bronfman family, acting through Edgar Bronfman, and Edgar Bronfman himself, never intended to perform or to fully perform the oral agreement or written option with defendant. The stock option transaction was tainted with fraud of Edgar Bronfman and he was guilty of fraud from the inception of the agreement which he made and was authorized to make. He intended to use the Oklahoma Statute of Frauds and the corporations involved to perpetrate fraud."

Other contentions are presented by the parties which we need not consider in view of our disposition of the case.

The judgment is reversed, and the case is remanded with directions to enter judgment in favor of appellant upon appellee's counterclaim.

APPENDIX C

Order of Circuit Court Denying Rehearing

ORDER DENYING PETITION FOR REHEARING

Twenty-third Day, November Term,
Monday, December 10th, 1962.

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable John C. Pickett and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard on the petition of appellee for a rehearing herein and was submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

APPENDIX D

Oklahoma Statute of Frauds

15 Okl. St. Ann. § 136. STATUTE OF FRAUDS

The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that, by its terms, is not to be performed within the year from the making thereof.

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than fifty dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences or some of them, of such things in action, or pay at the same time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale was made, is a sufficient memorandum.

APPENDIX E

Article III of the United States Constitution

"Section 1. The judicial Power of the United States, shall be vested in one supreme Court, * * *

"Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising * * * between Citizens of different States, * * *

"* * * In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. * * *"

Amendment V To The United States Constitution

"No person shall * * * be deprived of life, liberty, or property, without due pricess of law; * * *"

APPENDIX F

Rules 52 of the Federal Rules of Civil Procedure, 28 U.S.C.A.

"Rule 52. Findings by the Court

"(a) Effect. In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; * * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. * * *"

See also Amendments to Rules of Civil Procedure for the United States District Courts adopted by the Supreme Court of the United States, January 21, 1963, 31 F.R.D. 1 at page 17.

APPENDIX G

Rule 19 of the Revised Rules of the Supreme Court of the United States Adopted April 12, 1954 Effective July 1, 1954

"PART V. JURISDICTION ON WRIT OF CERTIORARI.

19.

"CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI.

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered.

* * *

"(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state

or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. . . . "

APPENDIX H

Order Extending Time to File Petition for Writ of Certiorari

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1962

DAN W. SHAFFER, *Petitioner*,

v.

JOSEPH E. SEAGRAM & SONS, INC.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 11, 1963.

(S) BYRON R. WHITE
Associate Justice of the Supreme Court of the United States.

Dated this 8th day of March, 1963.